

The Solicitors' Journal

VOL. LXXXV.

Saturday, July 19, 1941.

No. 29

Current Topics: Landlord and Tenant (War Damage) (Amendment) Bill—Ground Leases—The Pharmacy and Medicines Bill—Solicitors Accounts Rules—The Liabilities (War-Time Adjustment) Rules, 1941—Recent Decisions ... 301	War Damage Contribution on Property ... 303	To-day and Yesterday ... 306
	Criminal Law and Practice ... 304	War Legislation ... 307
	A Conveyancer's Diary ... 304	The Law Society ... 307
	Landlord and Tenant Notebook ... 305	Notes of Cases—
	Our County Court Letter ... 306	Jones, W. v. Jones, A. ... 308

Editorial, Publishing and Advertisement Offices: 29-31 Breems Buildings, London, E.C. 4. Temporary Telephone: Holborn 0162.

SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.

Annual Subscription: £3, *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 4d. *post free*.

CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (no necessarily for publication) and be addressed to The Editor at the above address.

ADVERTISEMENTS: Advertisements must be received not later than first post Tuesday, and be addressed to The Manager at the above address.

Current Topics.

LANDLORD AND TENANT (WAR DAMAGE) (AMENDMENT) BILL.

SOME of the amendments considered on the third reading of the Landlord and Tenant (War Damage) (Amendment) Bill show that the experience of the courts in dealing with the Act of 1939 has not been lost on those responsible for drafting the new measure. It will be recalled that the Court of Appeal recently in *Turner v. Stella Bond, Ltd.*, 85 Sol. J. 189, held that the fact that rent was payable in advance did not make it payable during the period of unfitness where rent was not payable under s. 11 (1) from the date of the notice to avoid disclaimer. The Court of Appeal later, however, held in *Hildebrand and Anor. v. Lewis* on 18th June (*The Times*, 19th June) that rent payable in advance was payable in full after a notice of disclaimer. The difficulty created by these decisions was covered by words inserted in cl. 1 in committee with regard to short tenancies of not more than three months, but the Attorney-General promised that the matter would be investigated with regard to longer tenancies and a possible change in the Bill would be made in another place. An amendment proposed by the Attorney-General, and agreed to by the House, was intended, the Attorney-General said, to meet a point that was raised in Committee. A certificate of fitness might properly be given shortly after the damage was done, and four or five months later it might be that more materials were available and the standard on which the certificate was given had ceased to be a reasonable standard of fitness. The object of the amendment was to enable the tenant to go back to the local authority and say, "I want my house looked at again," and if an official of the local authority came to the conclusion that it had not been kept up to or improved up to the proper standard as at that date, he could withdraw the certificate and the house would be treated as unfit. In answer to some criticisms of the amendment, the Attorney-General agreed that it was most important that words should not be used which in law would involve the necessity for a meeting of the council or a committee before the certificate could be issued, and if it was found necessary to insert words to make that certain, words would be added. Another amendment which was carried dealt with a point raised by Mr. Spens in Committee. He had suggested that a tenant whose house was slightly damaged might serve a conditional notice of retention in order to get out of paying his rent while the War Damage Commission were dealing with the vast number of cases with which they would have to deal; that he could wait until they had decided that they would give him cost of works; and that in that way the landlord would be kept out of the rent for a long period although an expenditure of a few pounds could have made the premises fit. It was proposed by the amendment to put upon the tenant who is in such a position an obligation which it is clearly reasonable that he should bear, i.e., to execute all such works as are "reasonably practicable for temporarily meeting the circumstances created by the damage." The Bill was read a third time and passed.

GROUND LEASES.

THE proposal in the Landlord and Tenant (War Damage) (Amendment) Bill to make the principal Act applicable to ground leases in the same way as to other leases has encountered serious criticism in a letter to *The Times* of 30th June from Lord Ilchester. He

points out that the desire should be to find a *modus operandi* which is fair to both parties, the tenant and the landowner. While the result has been reasonably achieved in the case of rack-rented properties, the whole position was very different with regard to ground rents. Under the Bill, his lordship wrote, the binding contract to hand over the building to the lessor at the end of the ninety or one hundred years' term was made null and void in the event of the house being seriously damaged or destroyed, notwithstanding the fact that the yearly payment was not based on the bricks and mortar, but on the land. Thus, the unfortunate owner, through no fault of his own, besides losing the value of his reversion to the building, as originally arranged with the lessee, would have to find a new tenant for the plot and begin all over again. It might be thought, the letter continues, that the compensation payable to the tenant in due course under the War Damage Act should have been so arranged as to provide for a fair compromise, but there seemed to be no mention of that in the new Bill. It was hopeless, therefore, to discuss the compensation clauses, as no lawyer or surveyor could agree on their meanings. His lordship said that he understood that no announcement had yet been made as to who was to pay the insurance of 2s. per cent. on Sched. A under the War Damage Act. The truth was, his lordship continued, that recent legislation was creating a further paradise for lawyers, for, as usual, confused drafting and indeterminate phraseology necessitated constant recourse to the courts. This indictment, if in any way founded on fact, would be grave indeed. There is good reason, however, for holding that it is based on a complete misapprehension of the true position. Section 23 of the War Damage Act, 1941, leaves no doubt at all as to who is to pay the instalment of contribution, and there can similarly be no doubt as to the ultimate incidence of liability for the contribution or part thereof under the Fourth Schedule. As to payment of compensation, the ground landlord cannot complain, as under s. 9 (2) he, like the owners of other interests, obtains a share proportionate to the loss in value of his interest and there is most satisfactory provision in s. 7 for a fair valuation. His lordship does not specify what sacrifice of the tenant's interests will suffice to appease the ground landlord, nor does he indicate any matter in respect of which the ground landlord is in a worse position than the owner of the lease. Indeed, in many ways his position is better, as he still has the ground, as well as the prospect of some compensation for the injury to his interest, while all that the tenant has in most cases is the prospect of compensation.

THE PHARMACY AND MEDICINES BILL.

THE Pharmacy and Medicines Bill was introduced and read a first time on 26th June. On 8th July the Minister of Health, in moving its second reading, said that the main purpose of the Bill involved "a very old and controversial story," the repeal of the Medicine Stamp Duty and the Licence Duty in accordance with the promise given by the Chancellor of the Exchequer in his Budget speech on 7th April. The tax had become difficult to collect, if not quite unworkable, and its present small yield was due in large part to many anomalous exceptions. The main exemptions were, first, that only medicines in which a proprietary right was claimed were suitable, and a disclaimer of any such right, if made on the label, exempted them. The second exemption was due to the fact that only medicines referring to the cure of ailments were dutiable, so that, for example, "cough mixture" pays duty, but "chest mixture" does not. There are twelve Acts on the

Statute book dealing with this subject, the first being dated 1802 and the last 1937. The Act of 1802 is still in existence and is the principal Act. The Acts have been stigmatised by the High Court as "a mass of confused and obsolete verbiage" and, as the Minister stated, are quite unsuitable in the light of modern conditions and modern business. The Bill provides (*inter alia*) that a retailer who sells drugs (including poisons in Pt. I of the Poisons List) at a chemist's shop shall not be required to have a registered pharmacist in charge at any other shop where he sells drugs (but no poisons in Pt. I of the Poisons List) if the conditions laid down in the clause are observed, together with further conditions to be prescribed in regulations. Only pre-packed drugs are to be so sold, no dispensing must be done or prescriptions received on the premises, the predominant part of the shop's business must be the sale of articles other than drugs and medical and surgical appliances, and no title, emblem or description must be used suggesting that the shop is a chemist's shop. Clause 3 is an interesting clause, making it an offence to take part in the publication of any advertisement calculated to lead to the use of any article for the treatment of any person for Bright's disease, cataract, diabetes, epilepsy or fits, glaucoma, locomotor ataxy, paralysis or tuberculosis, except in the case of advertisements published by a local authority or voluntary hospital, or for the information only of specified groups of persons. There is a similar prohibition in cl. 4, subject to the same exception, of advertisements calculated to lead to the use of articles for procuring the miscarriage of women. It is also proposed to repeal the retail sale of medicines on or after 1st January, 1942, without the disclosure on the container, wrapper or label of their composition except in the case of medicines made up to prescriptions. Finally, the medicine stamp duty and the associated licence duty are to be repealed as from 2nd September, 1941. In the course of debate a number of interesting points were cleared up. It was stated that it was not intended to interfere with the legitimate trade of legitimate herbalists, and there was no difference whatever between the treatment of and the arrangements for "the little man and the big man, the big bottle and the little bottle, the high-priced and the low-priced goods." Perhaps the best description of one of the main objects of the Bill was forthcoming from Rear-Admiral Beamish, who said that it seemed to him at least to control, and in some measure to expose, the monstrous and pagan fraud of the quack-salver.

SOLICITORS ACCOUNTS RULES.

THE new rr. 4 and 5 of the Solicitors Accounts Rules have now been made by the Council of The Law Society after consideration of proposed amendments by Provincial Law Societies and individual members, and approved by Mr. Justice Morton on behalf of the Master of the Rolls pursuant to a direction of 18th April, 1941, by which the latter's functions during his absence abroad were exercised by Mr. Justice Morton. The new rules provide that no money shall be drawn from a client account other than:—(a) money properly required for payment to or on behalf of a client; (b) money properly required for or towards payment of a debt due to the solicitor from a client or in reimbursement of money expended by the solicitor on behalf of a client; (c) money drawn on a client's authority; (d) money properly required for or towards payment of the solicitor's costs where a bill of costs or other written intimation of the amount of costs incurred has been delivered to a client and the client has been notified that money held for him will be applied towards or in satisfaction of such costs; (e) such money belonging to the solicitor as may have been paid into the account under paragraphs (b) or (d) of Rule 3; (f) money which may by mistake or accident have been paid into such account in contravention of Rule 3; or (g) money which the Council upon written application by the solicitor specifically authorise in writing to be withdrawn from such account. In cases (a), (b), (c) or (d) the money so drawn is not to exceed the total of the money held for the time being in such account for such client. A solicitor is not, however, obliged to pay into a client account money which (a) the client for his own convenience requests the solicitor to withhold from such account; (b) is received for or towards payment of a client's debt to the solicitor or in reimbursement of money spent on the client's behalf; (c) the solicitor pays into a separate banking account in the name of the client, his nominee or agent; (d) is paid in the ordinary course of business, on receipt on the client's behalf, to a third party; (e) is on receipt paid to the client; (f) is paid to the solicitor expressly on account of costs incurred, in respect of which a bill of costs or other written intimation of the amount of the costs has been delivered, or as an agreed fee, or on account of an agreed fee for business undertaken or to be undertaken; or (g) the Council on the solicitor's written application specifically authorises in writing to be withheld from such account. The existence of these rules will materially enhance public confidence in the legal profession.

THE LIABILITIES (WAR-TIME ADJUSTMENT) RULES, 1941.

THE Lord Chancellor's Department has lost no time in publishing general rules under the Liabilities (War-Time Adjustment) Act, 1941, s. 16, in order to make available at the earliest date the much-needed facilities in the Act (S.R. & O., 1941, No. 942/L17, dated 30th June, 1941). The rules contain a number of necessary

forms, including the form of application for the services of an adjustment officer by an individual or firm, the same application by a company, notices to attend before liabilities adjustment officers, applications for adjustment orders, forms of affidavit by debtors, whether individuals, partners or companies, form of affidavit by a creditor, notice requiring a creditor to prove, proof of debt, notice of creditors' meeting, form of proxy, and notice of approval of a scheme of arrangement. The applicant for advice and assistance from a liabilities adjustment officer must either reside or carry on business in the county court district or must have done so for the greater part of the six months immediately preceding the date of the application. The rules provide facilities for the debtor's attendance on the liabilities adjustment officer and specifies the kind of information which he should provide. The liabilities adjustment officer may require a statement of affairs to be furnished. The rules provide for a notice refusing the debtor's application, or in a proper case, assistance by the liabilities adjustment officer in any application for a protection order or, alternatively, in arranging a scheme of composition with the creditors, to be subsequently approved by the officer. There is also provision for a non-assenting creditor to appeal against the approval of a scheme. The originating application for a liabilities adjustment order may be commenced in the county court for the district in which the debtor resides or carries on business or has resided or carried on business for the greater part of the six months immediately preceding the date of the application. If there is a report by the adjustment officer it should be filed with the application together with the necessary affidavit. There is provision for a preliminary hearing in private and for reference of any matters to the liabilities adjustment officer or the registrar for investigation and report. The registrar may conduct the preliminary hearing but is not empowered to make a liabilities adjustment order, and his refusal of an order is subject to appeal to the judge. The adjustment officer must supply the registrar of deeds of arrangement with particulars of schemes of arrangement approved, and the registrar of the court must gazette protection orders and liabilities adjustment orders, which must then be registered by the registrar of deeds of arrangement. An index of approved schemes, protection and adjustment orders, is to be kept by the registrar of the county court and is to be open to inspection. Application for a search may be made by prepaid post. With regard to companies, the appropriate court is the High Court where the registered office of the company is situate within the London Bankruptcy District; outside that district the jurisdiction follows the company winding-up jurisdiction. An article dealing with these somewhat lengthy rules in fuller detail will be published shortly.

RECENT DECISIONS.

In *Camkin v. Bishop* on 4th July (*The Times*, 5th July), the Court of Appeal (Scott, Clauson and Goddard, L.J.J.) held, allowing an appeal from a decision of Cassels, J., at Birmingham Assizes, that a headmaster of a public school was not liable to pay damages for negligence in respect of injuries to a schoolboy under his care, the negligence alleged being failure to send a master in charge of a company of twenty-two boys sent to help at a farm a few miles away from the school. One boy threw a clod of earth at the plaintiff, causing him the loss of an eye.

In *Yorkshire Dale Steamship Co., Ltd. v. Minister of War Transport* on 4th July (*The Times*, 5th July), the Lord Chief Justice held that where a steamship was requisitioned by the Minister under the usual charterparty T99 and the steamship, which was engaged on a convoy to carry war material, admittedly a warlike operation, became stranded, not as a result of improper navigation, but partly owing to fog, an unexpected set of the tide and dimmed lights owing to the war, the loss was due to a warlike operation.

In *R. v. Jennings* on 7th July (*The Times*, 8th July) the Court of Criminal Appeal (the Lord Chief Justice and Tucker and Asquith, J.J.) held in a murder appeal in which drunkenness had been pleaded as a defence in the court below that, having regard to the judgments in *R. v. Beard*, 14 Cr. App. Cas. 159, a proper direction had been given to the jury.

In *Wales (Inspector of Taxes) v. Graham* on 9th July (*The Times*, 10th July) Macnaghten, J., held that a divisional engineer employed by the London County Council was entitled to deduct from his emoluments a sum paid to the Institution of Civil Engineers as annual subscription as money spent wholly, exclusively and necessarily in the performance of his duties as divisional engineer. He proved that the qualification provided by the membership subscription was essential to the performance of certain statutory functions of his employment.

Mr. C. Bruce Park, Official Receiver at the London Bankruptcy Court, has relinquished his appointment at the court to serve in another department of the Board of Trade. Mr. Bruce Park has been connected with the London Bankruptcy Court since 1928 and had acted as Official Receiver during the past seven years.

War Damage Contribution on Property.

(Contributed.)

ON 1st July the initial War Damage insurance contribution on properties became payable and the Inland Revenue are now issuing the demand notes. It is estimated that there are about 13,000,000 properties in the country to be charged under the War Damage Act, and it is obvious that many people will look to their solicitors for explanation and counsel in regard to this novel impost on property.

The Inland Revenue are issuing a four-page explanatory leaflet W.D.7, which contains a summary of the statutory provisions. The five annual instalments payable on 1st July in each of the years 1941, 1942, 1943, 1944, and 1945 cover the risk period from 3rd September, 1939, to 31st August, 1941. Each of the five instalments will be charged at the rate of 2s. in the £ on the net Sched. A assessment of property for income tax purposes as at September, 1939. The rate of 6d. in the £ will, however, apply to (a) agricultural properties (including farmhouses and farm cottages), (b) properties used for open air games, etc., and (c) waste land and property valuable solely or mainly for shooting or fishing.

The liability for the contribution is that of the person who, at the 1st January preceding the date the instalment becomes due, owned the principal "proprietary interest" in the property. Broadly, a "proprietary interest" means the ownership of property or occupation under a lease of more than seven years' duration. If more than one person own "proprietary interests" in a property, e.g., where there are two leases relating to a property each of longer duration than seven years, the person having possession of the property is deemed to own the principal "proprietary interest." Thus, the general rule is that contributions are payable by the owner in the case of:—

- (a) all owner-occupier properties, and
- (b) all properties let for periods of seven years or less.

Every property which was in being on the 3rd September, 1939 (the date of the commencement of the war) will be charged, as well as properties which have been erected subsequently. Statements of liability will be sent out even though a property is demolished by enemy action. While the contribution will not actually be collected in such cases until compensation is paid, it is thought desirable, by this means, to notify the owner, or other person chargeable, that the property is assessed and, therefore, effectively insured. Accordingly, every owner or other person chargeable should see to it that he obtains a statement of liability for every property in which he is interested. He should not pay any contribution to the Tax Collector in respect of demolished properties, but notify the authorities of the date of destruction unless he has already done so. As regards properties damaged by enemy action, the Inspector of Taxes, upon being notified, will arrange for the deferment of the contribution while the property is unfit for use.

While the War Damage Act provides for charging property itself and is levying the contribution upon the person holding the principal "proprietary interest," it also gives directions regarding the passing on of part of the burden to indirect contributors in certain circumstances. Thus, the owner of leasehold property can recover a proportion of the charge from the ground landlord if his lease has less than one hundred years to run. Details of the proportions of the contribution which are recoverable from the ground landlord are given in Form W.D.7.

A tenant of property let on lease for longer than seven years will be charged initially on the full amount of the contribution, but will be able to recover a proportion from his landlord based upon a table given in Form W.D.7.

A direct or indirect contributor whose "proprietary interest" is mortgaged may in certain circumstances recover a proportion of his net liability from the mortgagee. Here again full particulars of the computation of the appropriate proportion will be found in Form W.D.7.

Whenever a tenant or mortgagor is entitled to recoup himself of part of the contribution, he may deduct the amount of any payment of rent falling due, or from any payment (whether of interest or capital) falling due to a mortgagee, on or after the date on which he became entitled to recover.

The War Damage Act makes special provision in regard to:—

- (a) properties held and occupied for certain charitable purposes or for ecclesiastical purposes;
- (b) requisitioned properties;
- (c) fisheries, shooting and fishing rights, corn-rents, and other incorporeal rights;
- (d) advertising stations;
- (e) cases in which there is no "proprietary interest" extending to the whole of the contributory property.

Particulars regarding these special cases are given in a separate Inland Revenue memorandum, Form W.D.8, a copy of which may be obtained from the Inspector of Taxes or from the Collector.

It is clear that in the normal case there is not going to be much scope for negotiation and compromise in determining the War Damage contribution to be paid. Nevertheless, professional advice will obviously be sought by many persons who will not be able to understand the complicated provisions of the Act. The main

function of solicitors and other professional men who are consulted is, in most cases, going to be one of clarification and explanation rather than negotiation with the Inland Revenue.

There are certain major points of difficulty which will no doubt create a sense of grievance in numerous cases. They are chiefly these:—

- (1) The adoption of the Sched. A income tax assessment and not the rateable assessment as the basis.
- (2) The refusal to take any account of a fall in the annual value of a property since the beginning of the war.
- (3) The position of flat and tenement property.

Undoubtedly the biggest difficulty is going to be caused by the adoption of the net Sched. A assessment as the basis. This will inevitably give rise to many anomalies, for the reason that most owner-occupied properties are assessed for income tax under Sched. A on the rateable value or something near it, whereas if a property is let at a fairly high rent the Sched. A assessment, based on the rent, may be considerably greater than the rating value. In some cases a Sched. A assessment may be twice and even three times as great as the rating assessment. The position may arise where an owner-occupier may have to pay, say, £75 War Damage contribution over the five years 1941/1945, whereas the landlord of a rented house next door, of the same age and size, may have to pay £150 because it is let at a high rent. In the majority of cases the disparity will not, of course, be as great as this, but this variation in the contribution as between properties of similar capital value will obviously cause some dissatisfaction and perplexity.

During the debates on the War Damage Bill the Chancellor of the Exchequer was made fully aware of the anomalies of this nature that would arise, but he adhered to the standpoint that the Sched. A assessment provides the best basis for assessing the War Damage contribution. Here is an excerpt from what he said on the subject: "So far as contribution is concerned, the main requirement is a simple, familiar and readily available basis which at any rate will provide a workable scheme. Whilst it is obvious that there is no perfect solution, such a basis is afforded by the net assessment of properties to Sched. A income tax, or, where such assessments do not exist, net annual value for rating. It may be said that such a contribution is not scientifically related to the capital value or nicely calculated as between one individual and another, but it does, I suggest to my Hon. Friends, adopt a known and well-tried system and on this basis provides, by and large, a substantial and adequate contribution from property owners as a whole."

The second major cause of complaints and inquiries will be the refusal to take into account any reduction in the annual value of properties since the war. Landlords in the blitzed areas and the coastal defence zones may think that this is rather harsh, but there is probably some force in the Government's view that any depreciation in the capital or annual value of a property due to war circumstances of this nature is a temporary factor, and that it would be wrong to take it into account for the purpose of deciding liability for War Damage insurance. The principle adopted by the Chancellor is that the value as at September, 1939, must be the invariable basis, except where there have been structural alterations or improvements in property, when the Revenue will take the new figure.

One case of hardship is that of the taxpayer who has not in the past been liable to income tax and who had not (up to September, 1939) troubled to appeal against an excessive Sched. A assessment on a property owned by him. The Chancellor's attention was drawn to this point in Parliament, but he declined to make any concession. He stated that in the case of owner-occupier property any fall in value would have been reflected in the rating assessment and that this factor would probably have been taken into account for the purpose of the income tax assessment. This does not, however, cover the position of rented properties, whose owners were exempt from tax up to the war.

Another cause of friction will be the determination of the contribution to be paid in respect of flats and tenements, where there may have been no genuine Sched. A value fixed for some years. The reason for this is that flats are usually assessed to income tax on the gross rents less certain outgoings and an allowance for voids, which means that the actual amount on which tax is paid fluctuates each year. In reply to questions the Chancellor has appeared to suggest that the nominal Sched. A assessment will be taken. As in many cases, however, this was merely a rough approximation and not a precise and scientific figure, it appears probable that the Inland Revenue will have to issue instructions to Inspectors of Taxes on this point and arrive at some satisfactory basis.

The Master of the Rolls has resumed his official duties in the Court of Appeal. Last April he went to the United States at the invitation of the Judges of the Supreme Court of the State of New York, and the New York Bar Association, to attend the celebrations of the 250th anniversary of the foundation of the court.

City firms whose offices have been destroyed by enemy action are invited to record their new addresses at the Guildhall Library, Basinghall Street, E.C.2, where a register will be available for consultation.

Criminal Law and Practice.

THE DEFENCE OF DRUNKENNESS.

THE question of the kind of direction which must be given to the jury in a criminal trial in which the defence of drunkenness is raised was recently (7th July) argued in the Court of Criminal Appeal in *R. v. Jennings* (*The Times*, 8th July).

In that case the court dismissed an appeal from a conviction for murder. The facts were that on the material date, 26th January, 1941, the appellant had spent the time between 6.30 p.m. and 10.50 p.m. almost continuously drinking. He had about seven whiskies and at least 10½ pints of beer. He was a soldier, and when he returned to barracks at about 10.30 p.m. he was talkative and merry. Later, his condition deteriorating, he put on running shoes, took his rifle, and went out, as he said, to do a break.

He went to the back door of the N.A.A.F.I. canteen and unsuccessfully tried to break the lock by firing several shots at it. He then went to the front, having heard a voice from inside the building, and he fired at random towards a shaft of light thrown across the road by the opening of a front door. His motive in shooting, he said, was to scare off pursuit and enable him to escape.

The prosecution's case, however, was that the appellant entered the canteen, shot the caretaker, who was afterwards found killed, with a bullet in his body, and escaped with the money in the till.

On behalf of the appellant, it was argued that the jury should have been asked to say whether, having regard to his drunken condition, the appellant had in fact formed the intention necessary to justify a verdict of murder. In dismissing the appeal, the Lord Chief Justice referred to *R. v. Beard* (14 Cr. App. Cas. 149), and said that the court doubted in any case whether the question of drunkenness had the critical importance which had been suggested by counsel's argument.

There can be no doubt that wherever the facts justify it, the defence of drunkenness is of such critical importance that judges must carefully study and apply the classic House of Lords' decision in *R. v. Beard* [1920] A.C. 479. It may be recalled that in that case Bailhache, J., in summing up, appeared to apply the test applicable where the defence of insanity is raised. He directed the jury that the defence of drunkenness could only prevail if the accused by reason of his drunkenness did not know what he was doing or did not know that he was doing wrong. He gave as an instance the case of a man who cut the throat of a woman, thinking that he was cutting the throat of a pig, but added that if a man said that he was mad, and turned into a brute by drink, it was no defence, unless he satisfied the jury that he was so far out of his senses that he did not know what he was doing.

The Court of Criminal Appeal held that this was an improper direction, being applicable to insanity and not to drunkenness defences, and not being satisfied that the verdict would have been the same if the proper direction had been given, substituted a verdict of manslaughter for that of murder.

Lord Birkenhead delivered the judgment of the House of Lords, and examined the history of the law as to drunkenness in its relation to criminality. He said that until early in the nineteenth century voluntary drunkenness was never an excuse for criminal misconduct—indeed, the classic authorities asserted that drunkenness must be considered as an aggravation rather than as a defence. (Hale, P.C., 1, 32; Hawkins, P.C. 1, c. 1, s. 6; Coke upon Littleton 247a and Bl. Comm. IV, c. 2, s. III, p. 25.) This rigidity of rule was gradually relaxed in the nineteenth century.

With regard to the cases, his lordship stressed a point which is frequently forgotten by counsel, that the judge, when directing the jury with regard to the circumstances of a particular case, was not writing in *abstracto* a treatise on the criminal law, and that his words must always be considered with reference to the special facts then before the jury.

His lordship then examined the cases decided in the nineteenth century, and set out his conclusions from them under three heads: (1) That insanity, whether produced by drunkenness or otherwise, is a good defence, but the distinction between the defence of insanity in the true sense caused by excessive drinking, and the defence of drunkenness which produces a condition such that the drunken man's mind becomes incapable of forming a specific intention, has been preserved throughout the cases. (2) That evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had this intent. (3) That evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that the mind was affected by drink so that the accused more readily gave way to some violent passion, does not rebut the presumption that a man intends the natural consequences of his acts.

His lordship then examined *R. v. Meade* [1909] 1 K.B. 895, a case of violent and brutal wife-murder. Lord Coleridge, J., in that case directed the jury by pointing out that knowledge of the consequences of a person's acts was not presumed in the case of an insane person, but that where it was part of the essence of a crime that a particular motive (meaning intent) shall exist

in the mind of the one who does the act, the law declares this—that if the mind at that time is so obscured by drink, if the reason is dethroned and the man is incapable therefore of forming that intent, it justifies the reduction of the charge from murder to manslaughter. In upholding this view of the law, Darling, J., in the Court of Criminal Appeal, said that the presumption that a man intends the natural consequences of his acts may be rebutted in the case of a man who is drunk by showing that his mind was so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous, i.e., likely to inflict serious injury.

Lord Birkenhead said that the proposition in *Meade's case* in its wider application could not be supported by authority. He pointed out that Darling, J., stated that he did not wish to extend the ambit of the older cases, and therefore, while it might apply to a case of violence done with intent to do grievous bodily harm, as in *Meade's case*, it could not apply to a violent act done in furtherance of what was itself a felony, i.e., rape, as in *Beard's case*.

With regard to the actual direction of Bailhache, J., Lord Birkenhead said that the distinction between insanity and drunkenness as a defence was preserved throughout the cases. He pointed out that in *Meade's case* the Court of Criminal Appeal approved the direction because the judge had sufficiently warned the jury that there was no plea of insanity. He also said that the judge should not introduce the question whether the prisoner knew he was doing wrong in a defence of drunkenness where insanity was not pleaded, as it was bound to be perplexing to a jury to have to decide whether, if a drunken person knew what he was doing, he knew also that he was doing wrong.

The appeal by the Crown was allowed and a conviction of murder was substituted, as there was no evidence that the accused was too drunk to form the intent of committing rape.

It is easy to attack a summing up on the ground that there has been some misdirection, but in these cases misdirection is almost invariably in favour of the prisoner, and therefore unless it is obvious that the jury's mind has been confused by the misdirection, it is better not to pursue the criticism.

A Conveyancer's Diary.

MOBILISED SECURITIES: APPORTIONMENT.

I AM indebted for the point discussed below to a friend who, unfortunately for himself, was interested in a specific case where it arose. As he has decided to take no proceedings, it is proper to discuss the matter here. Indeed, as the point must be of wide interest, it may also be generally helpful to do so.

In the course of the present war, a number of orders have been made "mobilising" securities of various kinds. I shall take as an example the recent "mobilisation" of India 4½ per cent. stock, as it most sharply illustrates the point at issue. When securities are "mobilised" the effect is that they become vested in the Treasury and a sum of sterling is paid to the former owner. This sum is arrived at by calculation from the market price of the stock on a given day. Now, with a fixed interest-bearing security, as is an India stock, the market price on any day necessarily allows for such part of the instalment of interest next due as is appropriate on the footing that interest accrues from day to day. Of course, if the stock has only just gone ex-dividend the allowance is infinitesimal, but by halfway to the next interest date it is substantial. The question is whether the appropriate proportion of the Treasury payment in respect of settled stock ought to be paid by the trustees to the tenant for life. He is going to suffer a very serious loss of future income in any event, as it is impossible for the trustees to reinvest in a comparable security with a return of anything like 4½ per cent. But if "mobilisation" takes place when, say, three months' interest has accrued (over 1 per cent.), it is obviously most unfair that the life-tenant should also lose that past income altogether.

The ordinary rule is, of course, that there is no apportionment between capital and income of the money received or paid on sales or purchases of trust securities. My friend, who was life-tenant, was referred to this rule both by the trustees and by the Treasury, to both of whom he applied for help.

Presumably the Treasury, if it chose, could so frame its Order, at any rate on the next occasion, as to obviate this injustice. But the fact that my friend was merely referred to the "rule of law" is not encouraging, and it may be as well to examine the legal position in case the authorities take no action. So far as I can see it is very far from clear that in this most unusual instance the ordinary rule applies.

Kindersley, V.-C., stated in *Freeman v. Whitbread* (1865), L.R. 1 Eq. 266, that he was not aware "of a single case till 1854 in which a tenant for life had been held entitled to recover out of the corpus of the trust property any sum as compensation for dividend with reference to the interval of time which may elapse between the last preceding dividend day and the day of the sale of the stock." He referred to two cases where it had been done, one of which was *Bulkeley v. Stephens*, 3 N.R. 105, where the

sale was ordered by the court, and the other was *Lord Lonsdale v. Somerville*, 19 Beav. 295, where the stock in question was a very large round sum which had to be sold before a certain date and could not be sold just in time owing to the bank's transfer books being about to be closed. These cases *Kindersley*, V.-C., treated as exceptional, and laid it down quite clearly, following his own decision in *Scholefield v. Redfern*, 2 Dr. & Sm. 173, that though he sympathised with the "abstract principle" under which a tenant for life should in such a case receive part of the purchase money, yet the practical inconvenience of making calculations of this sort on every change of investment was so great that it would not be right for the court to reverse the existing rule of practice under which no apportionment is allowed. It is worth noticing in connection with this inconvenience that if there were an equity to give a tenant for life part of the proceeds of sale, there would equally be an equity on a purchase to take away from the tenant for life and give to capital a suitable part of the first dividend paid after the completion of the purchase, unless the stock were bought as soon as it went ex-dividend. This factor would double the amount of mathematics necessary for applying the equity. We all have a natural bias in favour of being generous to the tenant for life at the expense of capital. It is as well for us to remember that the equity, if existent, would cut both ways. The point that it would thus operate was made by the learned Vice-Chancellor in *Scholefield v. Redfern*.

The general rule that in the absence of special circumstances there is no apportionment was re-affirmed by Stirling, J., in 1896 when the old case *Bulkeley v. Stephens* made a second reported appearance before the court on a fresh point (see 1896, 2 Ch. 241). And there the matter rested until quite recently, when it was brought to general notice again by the decision of Clauson, J., in *Re Winterstoke* [1938] Ch. 158. Until that case most of us were, I think, hardly conscious that there was a rule or that there had been cases on it. The practical considerations are quite obvious. Indeed I recollect that in 1934 and 1935 I was concerned with extensive reinvestments of trust money, and that both my solicitors and I considered whether to try and apportion the proceeds of sale. We did not, I regret to say, look up any cases but decided as a matter of practical reason it would be quite impossible to make apportionments, and that anyhow with a good deal of buying and selling things would on the whole even themselves out.

In *Re Winterstoke*, however, Clauson, J., decided that the estate of a tenant for life was entitled to an apportioned part of the proceeds of sale of certain stocks sold after the tenant for life's death, in respect of dividend accrued in his lifetime. This decision has been criticised (and in fact so distinguished as not to have been followed) by Farwell, J., in *Re Firth* [1938] Ch. 57, so that it is doubtful whether it is correct. In one way I think, with respect, that Clauson, J., must have been wrong, in that he said that an apportionment should be made "where there is no difficulty in ascertaining the figure": as Farwell, J., pointed out, there either is an equity or there is not. If there is in general no equity because of the general inconvenience of having one, there is still no equity in a particular case where it would not be inconvenient. On the other hand, the rule against apportionment is only a rule of convenience and if there is a particular class of cases where the difficulties of apportioning would not be so great, it might be said that this rule does not apply. Thus, to apportion once for all on a death causes difficulties that are trivial beside those of doing so, both ways round, on repeated ordinary changes of investment. From this line of thought it would follow that there would normally be no apportionment on changes of investment, but that there would be apportionment on winding up a trust or a limited interest in trust funds. The trouble is, however, that *Re Firth* is a clear decision against there ever being apportionment on sale (except for special reasons) and so, for that matter, in *Bulkeley v. Stephens* [1896] 2 Ch. 241.

The law is therefore in a considerable state of confusion, but the balance of authority is against apportionment on sales in any case save where the tenant for life can point to some special circumstance. But the point which merits attention in connection with mobilised stock is whether there are not most unusual special circumstances to which a tenant for life can point. Clauson, J., observed in *Re Winterstoke* that trustees can generally mitigate the injustice of the rule against apportionment by choosing the right moment to sell. No one will, I think, challenge this passage in the judgment. But the choice of moment is denied to trustees whose holding is mobilised. That fact alone differentiates their case from all others. Secondly, the inconvenience of apportioning proceeds of a few confiscated securities is not even in the same class as that of doing the same with every security on every life-tenant's death, let alone with that of doing so on every change of any trust investments. Thirdly, "mobilisation" (i.e., confiscation) is (still) sufficiently unusual to be a special circumstance in itself.

For these reasons I think that it is very strongly arguable that, without placing any reliance on *Re Winterstoke*, it is still true on the other cases that this is a case for apportionment as an exception to the court's ordinary rule. I can but hope that some trust will have a large enough sum at stake to justify an originating summons. If so, the life-tenant should undoubtedly insist on one being issued. Unless and until the court's view has been expressed,

I hardly think that trustees will be wise (except perhaps in a case *de minimis*) to make an apportionment, because the question whether there are or are not special circumstances is one for the court, and one to which one cannot with certainty predict the answer. It is also to be hoped that there will shortly be a case on the wider issue in which the Court of Appeal will deal definitely one way or the other with the decision in *Re Winterstoke*, so that we may know how we stand.

Landlord and Tenant Notebook.

DEFECTIVE LIFT IN BLOCK OF FLATS.

THE decision in *Haseldine v. Daw* (1941), 85 Sol. J. 265, is of great importance to landlords of blocks of modern flats and to the families of their tenants, to visitors calling on, and tradesmen waiting upon, those tenants. For it shows that the responsibility of the landlord to the categories named as regards the safety of lifts they may use differs substantially from his responsibility for the "common staircase," as finally determined after much litigation. It is, perhaps, unfortunate that it was when the lift had all but superseded it as the usual means of access to and regress from upper floors the rights and liabilities in the matter of the staircase were at last settled by *Fairman v. Perpetual Investment Building Society* [1923] A.C. 74; and it is to be hoped that no counterpart of *Miller v. Hancock* [1893] 2 Q.B. 177 (C.A.) (overruled by the first-mentioned case), which was responsible for much of the trouble, will disturb the legal career of the lift.

What happened in *Miller v. Hancock* was that the court failed adequately to define the status of, or else sought to invent a new status for, the plaintiff. The plaintiff was an employee of a railway company, and when calling to collect a debt from a firm occupying offices in the defendant's building he fell and broke his leg owing to one of the stairs being in a worn and defective condition. While six published reports of the case differ in certain particulars, none describes the defect as a "trap" (and Lord Sumner, before making his speech in *Fairman v. Perpetual Investment Building Society*, went so far as to examine the pleadings in the Record Office, and to consult Bray, J., who had been one of the counsel engaged in the earlier case, in order to confirm his opinion that this was not part of the foundation of the judgments he was about to overrule). The basis of the judgment in *Miller v. Hancock* was that the landlord must know that those who supplied and dealt with tenants would go up and down the stairs; consequently, it was held, there was "a" relation between the landlord and them from which a duty arose on the part of the landlord to keep the staircase in reasonably safe repair. But no attempt was made, unfortunately, to place those who supplied and dealt with tenants in any of the well-known categories described in the judgment of Willes, J., in *Indermaur v. Dames* (1866), L.R. 1 C.P. 274: invitee, licensee, trespasser.

And before the problem was submitted to the House of Lords we had cases, such as *Lucy v. Bauden* [1914] 2 K.B. 318, and *Dobson v. Horsley* [1915] 1 K.B. 634 (C.A.), in which one cannot help feeling that the courts concerned were influenced by a feeling of deference when they "distinguished" *Miller v. Hancock* and reconciled their loyalty to that authority with the loyalty due to *Indermaur v. Dames*. In the one case the wife of one of the tenants of a house let in parts fell from some unprotected front steps, after slipping on one of them, into the area; Atkin, J., agreed that in respect of possession and control of the steps he could not distinguish the facts from those of *Miller v. Hancock*, but said that the evidence in that case "was clearly consistent with the defect being in the nature of the trap"; thus, the duties of the landlord were the same in each case, but the defendant in *Lucy v. Bauden* was held not to have infringed those duties. While in *Dobson v. Horsley*, the victim of a similar accident being a child resident in a similar house, the reasoning of Buckley, L.J., about the facts of *Miller v. Hancock* was as follows: "The fact that there was a defective stair was a fact which the persons using the staircase were not bound to anticipate. By allowing a stair to be defective the lessor was exposing persons using the staircase to a trap. He was leading them to think there was something there which was not there."

However, the necessity for such ingenuity was removed when *Fairman v. Perpetual Investment Building Society* overruled *Miller v. Hancock*, it being held that the plaintiff, lodger of one of the tenants of a block of flats who had fallen at a "worn" step, was a licensee and bound to take the stairs as she found them; the landlord on his side being bound not to expose her, without warning, to a hidden peril of the existence of which he knew or ought to have known. This authority settled the position as regards defects in common staircases; incidentally, it harmonised that position with what had, in a series of decisions, been held to be the law on accidents arising out of failure to light such staircases. (The decisions on the latter were consistent with one another, the plaintiff, if a licensee, always finding himself in this dilemma: if he could see where he was going, there was no trap; if he could not, he should not have gone at all—but it had not been always easy to reconcile them with *Miller v. Hancock*.)

Now in *Haseldine v. Daw* the plaintiff, when visiting a tenant of the defendant landlord, entered the lift for that purpose; and the lift, after taking him part of his way, fell rapidly to the bottom of its well owing to the negligent way in which maintenance contractors (who were made co-defendants) had replaced a water gland which they had repacked the day before.

In the light of *Fairman v. Perpetual Investment Building Society*, Hilbery, J., had no difficulty in investing the plaintiff with the character of a licensee; and in view of the maintenance contract, and of a fairly recent favourable report from the landlord's insurance company, and of the very recent overhaul, his lordship found that the first defendant had not known that it was dangerous to operate the lift as it was. Consequently there was no "trap."

But that did not exhaust the plaintiff's armoury, and Hilbery, J., proceeded to examine the proposition that the defendant landlord was liable as a carrier to the plaintiff as his passenger. After observing that it was immaterial whether carriage was in a horizontal or in a vertical plane, his lordship disposed of the argument that the service in question had been performed gratuitously. "A person who undertakes to provide for the conveyance of another, although he does so gratuitously, is bound to exercise due and reasonable care," said Parke, B., in *Lygo v. Newbold* (1854), 9 Ex. 502; and in *Harris v. Perry & Co.* [1903] 2 K.B. 219 (C.A.), cited by Hilbery, J., Collins, M.R., described the duty as "a larger duty than that of merely not setting a trap."

The description in question does not, of course, constitute a definition; and the numerous railway and motor-car cases will, I think, not be found to supply the deficiency. However, granted that there must be some limit to the obligation, further facts before Hilbery, J., in *Haseldine v. Daw* were as follows: the first defendant had been informed that the lift was working slowly owing to wear in various parts of its mechanism, and it was thirty-five years old. These facts, his lordship said, made it incumbent upon him to direct his mind to the question whether the lift was in a safe condition. Doing nothing about it constituted a breach of the "larger obligation."

It may perhaps be suggested that the accident was not the consequence of the breach of duty so found, a possible argument being that the negligence of the contractors was the *causa causans*; but the decision has certainly established an all-important distinction between responsibility for the condition of a common staircase and responsibility for that of a lift.

Our County Court Letter.

DAMAGE TO SHEEP BY DOGS.

In a recent case at Stoke-on-Trent County Court (*Stoke-on-Trent Corporation v. Shenton and Sherratt*) the claim was for £39 3s. 6d. against the first defendant and for £3 14s. 8d. against the second defendant as damages for trespass. The plaintiffs' case was that on the morning of the 23rd November, 1940, a shepherd had charge of seventy-seven feeding lambs in a 21-acre field. Several of the lambs had been killed by dogs, which could not be traced. On the 3rd December, however, the same two dogs were again seen and were identified as belonging to the respective defendants. The number of sheep lost was twenty-one and the first defendant had offered compensation. His Honour deputy-Judge A. R. Churchill gave judgment for the amounts claimed, with costs.

LIABILITY FOR GOLF SUBSCRIPTION.

In a recent case at Newcastle-under-Lyme County Court (*Newcastle Golf Club v. Myatt*) the claim was for £5 5s., being a subscription for the year ending the 30th September, 1938. The plaintiff's case was that the rules required written notice of resignation to be given to the secretary. The treasurer had issued a printed application for the subscription, but the defendant had neither paid the treasurer nor sent his resignation to the secretary. The defendant's case was that he had not exercised the privileges of membership since the summer of 1936. In 1937 the defendant had written resigning, and had gone to America. On his return in 1938 the defendant had received an application for a subscription, but considered that, in view of his resignation, he was not liable. His Honour Deputy Judge Dawson gave judgment for the plaintiffs, with costs.

MORTGAGE OF INSURANCE POLICIES.

In a recent case at Hanley County Court (*District Bank, Ltd. v. Vernon*) an application was made under the Courts (Emergency Powers) Act, 1939, s. 1 (2) (a) (iv), to realise a security, viz., two insurance policies. The case for the applicants was that the respondent's overdraft was secured by a policy for £250 with the Pearl Assurance Co. and one for £100 with the Tunstall and District Assurance Collecting Society. The surrender value of the two policies was £134, but the amount of the overdraft was £156. The larger policy matured in 1950, and the smaller one in 1945, and the premiums had been paid by the applicants to prevent lapse. The respondent's case was that his business of a debt collector had been closed, owing to the war. He was now working in a factory, and claimed relief under the above Act. An order was made for leave to proceed, suspended as long as the respondent paid the premiums.

To-day and Yesterday.

LEGAL CALENDAR.

14 July.—Till four in the morning of the 14th July, 1799, the King's Bench Prison burnt. By then between eighty and a hundred rooms had been destroyed. Many of the poor debtors confined there lost all their belongings. When the flames had first been seen bursting out of the place, driven by the wind towards the centre of the building, the relations of the prisoners had appeared frantically clamouring for their release. Immediately the Volunteers and a detachment of the Surrey Cavalry arrived to quell them. About an hour later the fire brigade came up. The conflagration began in an upper room but how remained a mystery, for there was not even a fireplace there.

15 July.—On the 15th July, 1776, a party of convicts chained two and two by the leg, the first subjects of an experiment in punishment, were put aboard a hulk or prison ship off Barking Creek in the Thames. The vessel had space for about thirty tons of sand or mud dredged up from the river, which was much choked about that part of its course. It was something between a ship, a tender and a lighter, part of the stern being decked-in as a sleeping place for the prisoners and part of the fore-castle being enclosed for the overseer. The men were to be "employed in as much labour as they can sustain; to be fed with legs and shins of beef, ox-cheek and such other coarse food; to have nothing to drink but water or small beer."

16 July.—Chief Baron Ward died at his house in Essex Street on the 16th July, 1714.

17 July.—On Friday, the 17th July, 1697, Tom Waters, the highwayman, died resolutely at Tyburn, whither he had been conveyed by coach. The crime for which he suffered was a robbery on Hounslow Heath, when he took £1,400 in money and plate from a Bristol carrier. Though he was only twenty-six when he was hanged he had followed his calling for five years, after running away from the notary to whom he had been apprenticed. His first exploit was to rob a band of twenty or thirty gipsies near Bromley. He held them up and took their money and a large quantity of gold rings and silver spoons. Another time he took ninety guineas from Vice-Admiral Sir Ralph Delaval, whom he stopped on the Portsmouth Road.

18 July.—On the 18th July, 1679, Evelyn wrote: "I went early to the Old Bailey Sessions House to the famous trial of Sir George Wakeman, one of the Queen's physicians, and three Benedictine monks; the first (whom I was well acquainted with and take to be a worthy gentleman abhorring such a fact) for intending to poison the King, the others as accomplices to carry out the plot to subvert the government and introduce Popery. The Bench was crowded with the Judges, Lord Mayor, Justices and innumerable spectators. The chief accusers, Dr. Oates (as he called himself) and one Bedlow, a man of inferior note. Their testimonies were not so pregnant and I fear much of it from hearsay." The accused were acquitted.

19 July.—The case of *Dew v. Clark*, 16 Jur. 1, decided in the Court of Chancery on the 19th July, 1851, is chiefly remarkable for the note appended to the report: "The reporter has gone more fully into the facts of this case than the importance of the question, in a legal point of view, demanded, in order that the public in general, and Mr. Charles Dickens in particular, may see what were the real grounds of the petitioner's long imprisonment, and to what extent the facts of this case, which is the chief one referred to in that sometimes entertaining and able periodical called *Household Words*, under the head of 'The Martyrs of Chancery' . . . The reporter may as well remark that in the case of another of Mr. Charles Dickens's 'Martyrs,' Mr. George Payne Andrews (reported in *Household Words*, Vol. 2, p. 495), an earlier, and probably more correct, report than Mr. Dickens's appeared in 1 Mac. & G. 380 and 14 Jur. 260. In fact, 'Dickens's Reports' have never been held in very high estimation, for correctness, by the Profession."

20 July.—On the 20th July, 1831, Timothy Reilly, a tailor, was tried at Ennis for his part in one of those atrocities which stained the feuds running through Irish history. One December night a crowd of men had broken into the place where three brothers, herdsmen to a country gentleman, slept. One had hidden himself but the other two had been caught and terribly ill-used, their tongues being cut out. The Court was horrified when they gave their evidence. Reilly was sentenced to be hanged.

The Week's Personality.

Chief Baron Ward, who died a fortnight before Queen Anne after more than nineteen years' judicial service, was an honest and intelligent judge, discreet and sufficiently learned to do his work well but not one of the great figures in English legal history. He had at first declined the judgeship, which was offered to him immediately after the Revolution of 1688, for he had always been a Whig, but in 1693 he had accepted the office of Attorney-General and two years later he had been appointed Chief Baron of the Exchequer and knighted. He was a member of the Inner Temple,

where he was called to the Bar in 1670, becoming a Bencher in 1687. He soon obtained a good practice and at the great trial of Lord Russell in 1683 he was briefed to argue points of law on behalf of the accused. Soon after he was engaged in the defence of his father-in-law, an eminent citizen of London, whom the Lord Mayor sued for malicious arrest. Jeffreys was the judge and interrupted him with characteristic impatience in the course of his argument, telling him he had launched into an ocean of discourse wholly wide of the mark, adding that he would "suffer none of his enamels nor his garnitures." The audience hissed this outburst and Mr. Ward with respectful firmness insisted on a hearing. Two of his sons became eminent lawyers.

Food in Prison.

It appears that there have been some disturbances in Parkhurst Prison over complaints about the meals, and that on one occasion the prisoners protested by refusing to go to their work or to return to their cells. No doubt the merits will be examined but, on the face of the incident, it seems somewhat captious of those who have deserved ill of their country to choose for their outburst just the time when all law-abiding citizens are on short commons. At any rate they have reason to be thankful that they live in a place and period where the State accepts the responsibility of feeding its captives. The Middle Ages left that to their friends and to the benevolently inclined. Even when public provision came to be made for them the beginnings were small. In the 17th and 18th century Newgate the debtors at first got only a small loaf a day and a portion of beef a week, and the felons fared worse. In the time of Mrs. Fry the debtors were getting fourteen ounces of bread a day. As for meat, eighteen stone a week had to do for all the inmates and there were often not fewer than three hundred. This went on till 1817 when the meat was no longer issued in bulk once a week but was distributed daily in rations. Still, however, it had not occurred to anyone to provide proper facilities for cooking it. By mid-Victorian times the position had been pretty well regularised. Pentonville provided a typical diet with 10 ounces of bread and $\frac{3}{4}$ pint of cocoa for breakfast; 4 ounces of meat, $\frac{1}{2}$ pint of soup, 5 ounces of bread and 1 lb. potatoes for dinner; and 1 pint of gruel and 5 ounces of bread for supper.

Frutful Protest.

Of course there were protests and disturbances from time to time, even in Millbank Prison, completed in 1822 and for some time a show-place proudly displayed. Trouble started when the Committee decided that the quality of the bread was too good and ought to be reduced. On the first day the prisoners left the stuff at their cell doors. On the morrow, a Sunday, they took them in but threw them along the passages. That day the Chancellor of the Exchequer was bringing a party of ladies to Divine Service in the Chapel. He could not be disappointed but the Governor felt impelled to carry into his pew three pistols loaded with ball. During service the prisoners banged the flaps of the benches and threw the bread about, shouting: "Better bread! Better bread!" They did not fail. The Chancellor of the Exchequer was moved to address them and promise to report to the Secretary of State, so at the cost of frightening the ladies they obtained a better diet. This included "animal food," meaning a quart of soup made from ox-heads and thickened with vegetables—one ox-head to a hundred persons. One ex-Governor of Millbank was amazed at the discontent shown and could not understand the "fretful and mischievous" prisoners.

War Legislation.

STATUTORY RULES AND ORDERS, 1941.

- E.P. 951. **Aircraft** (Immobilisation) Order, June 26.
- E.P. 961. **Biscuits** (Licensing and Control) Order, July 3.
- E.P. 954. **Defence (General)** Regulations, 1939. Order in Council, July 1, adding Regulation 60K, and amending Regulations 30A, 49, 55, 56, 74 and 75.
- E.P. 953. **Horticultural** (Cropping) Amendment Order, July 2.
- E.P. 955. **Imported Canned Meat** (Requisition) Order, 1939. Amendment Order, July 3.
- E.P. 956. **Imported Canned Meat** (Maximum Prices) Order, July 3.
- E.P. 962. **New Potatoes** (Maximum Prices) Order, 1941. General Licence, July 4.
- E.P. 945. **Soft Cheese** and **Curd Cheese** (Maximum Retail Prices) Order, July 2.
- No. 941. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 10) Order, July 7.
- E.P. 946. **Use of Milk** (Restriction) Order, 1941. General Licence, July 2.
- E.P. 952. **Wireless Telegraphy** (Aircraft) Order, June 26.

TREASURY.

Defence (Finance) Regulations, 1939, as amended up to June 3, 1941, together with a Classified List of Orders made under the Defence (Finance) Regulations, 1939 and in force on June 3, 1941. Third Edition, June 3, 1941.

War Risks Insurance Act, 1939, printed as amended by Defence Regulations and by the War Damage Act, 1941.

The Law Society.

THE Annual General Meeting of The Law Society was held at the Society's Hall, Chancery Lane, London, on Friday, 4th July, Lt.-Col. S. T. Maynard, President, in the chair.

Election of Officers and Members of Council.—THE RT. HON. SIR DENNIS HERBERT, K.B.E., M.P., was elected as President for the ensuing year, and Mr. G. S. Pott (London) as Vice-President, there being no other nominations. Messrs. W. C. Crocker, B. H. Drake, A. J. Driver, A. F. B. Florde, J. C. Medley, A. C. Morgan, A. F. I. Pickford, Sir Harry Pritchard and H. N. Smart (London), Mr. F. J. F. Curtis (Leeds), Mr. W. Davies (Llanelli) and Mr. W. J. Taylor (Newmarket) were elected Members of the Council, and Messrs. H. L. H. Hill, F.C.A., R. F. Hooper-Watts and F. P. Cheesman were elected Auditors.

Accounts.—Mr. A. C. MORGAN, in seconding the motion for the adoption of the accounts which had been moved by the President, said a substantial loss of income had occurred in items which the war was bound to affect, but the Society's usual activities had been maintained, and the war had necessitated a good deal of extra work and expenditure. Further efforts would be made to obtain from the Treasury an increased grant towards the expenses of discipline, but the Society had been warned that it must expect to pay for the privilege of being master in its own house. It was not clear, however, what return was obtained from the State commensurate with the sum of £192,000 which the profession contributed annually in stamp duty on practising certificates and so on. If the activities of the Society were to be continued on the present scale it would be necessary to draw on its reserves; for the past year there was a deficiency of over £8,000.

The Accounts were adopted.

THE PRESIDENT'S ADDRESS.

THE PRESIDENT, in moving the adoption of the Report, paid a tribute to the memory of those solicitors and their clerks who had been killed on active service or in this country by enemy action. The Society had to deplore the loss of some forty members and would also extend sympathy to those whose offices or homes had been damaged by bombing, but who, like the rest of the population, were continuing unperturbed their daily round.

The Council had lost by death the services of Mr. W. E. Mortimer, and by retirement those of Sir Hubert Dowson, both of whom had rendered long and valuable service.

The Council were deeply grateful for messages received from representative bodies of the legal profession in Canada, Australia and New Zealand.

Turning to the activities of the Society during the past year, he said that the Solicitors' Clerks' Pension Fund continued to grow and its finances were in a most satisfactory position, the investments amounting to some £120,000. The Council would urge all members of the profession to encourage their clerks to become subscribers.

Notwithstanding the great difficulties due to shortage of counsel, solicitors and clerks, the great public work of the Poor Persons Procedure had, on the whole, been successfully carried on, and without undue delays; but, as the shortage became more acute, it would be increasingly difficult to cope with the applications. The Incorporated Law Society of Merthyr Tydfil and Aberdare had, in response to an appeal by the Council, sent their way to resume their assistance under the Poor Persons Procedure during the continuance of the war.

An educational scheme had been arranged for men in the Forces. Instruction in legal subjects was given by correspondence, and the War Office had asked the Society to work the scheme in co-operation with the Council of Legal Education and the Society of Public Teachers of Law. Some 1,200 men had enrolled, and seventy members of the Society had agreed, owing to the shortage of tutors, to act in that capacity. Many provincial societies were allowing students to have access to their libraries.

The Council had redrafted rr. 4 and 5 of the Solicitors' Accounts Rules, and the proposed new rules had been published. Careful consideration had since been given to every letter received from members on the subject, and as a result certain improvements had been made. The revised rules had been approved by the Master of the Rolls.

A register had been established of solicitors having accommodation to spare which they were willing to offer to colleagues who had lost their premises by enemy action, and many members had availed themselves of these facilities. As a result of representations made to the Lord Chancellor's department, facilities had been granted to solicitors to make certain searches and obtain copies of documents free of charge. Arrangements had been made for documents to be photographed by special process on the Society's premises. The Council had been in communication with the Chief Land Registrar on the subject of establishing titles to properties where the deeds had been destroyed.

The 1940 Solicitors Bill passed all its stages in the House of Lords, but when it reached the Commons the Society was informed that facilities could not be given for its progress if it proved to be controversial. Unfortunately, certain members of the profession took exception to the inclusion of cl. 19, which dealt with the enforcement of minimum scales of charges. The Council met them

and offered to make various amendments in the clause to make it clear that it was only intended to deal with the evil of undercutting, but they did not see their way to accept the amendments. The Council decided again to introduce the Bill this year, Lord Wright once more taking charge of it in the House of Lords. An intimation was received from the Attorney-General, however, that although the Government hoped to give facilities for a Bill based on the recommendations of the Joint Select Committee of 1939, facilities could not be given for a Bill containing cl. 19, which had not been considered by that Committee. The Council, in reply, expressed the hope that when the measure came before the House of Commons it would be found to be non-controversial, but recognised that if that was not the case, cl. 19 would have to be dropped. They were informed that it would be useless to introduce a Bill containing cl. 19, and therefore the Bill was introduced into the Lords without that clause and passed all its stages in that House. It was then sent to the Commons and read a first time, but a few days ago it was learned that certain Members of Parliament had tabled a motion blocking the further progress of the Bill. The Council were now seeing whether their objections could be overcome.

The Council had endeavoured to obtain the inclusion of solicitors and their clerks in the Schedule of Reserved Occupations, first at age thirty and later on at age thirty-six. To this the Minister would not accede, but he offered a new procedure, whereby in the case of solicitors and their clerks who were thirty years of age or over on 22nd June, 1940, the Council could make recommendations for deferment, in the first instance not exceeding six months, to be forwarded through the Lord Chancellor's department to the Ministry of Labour; and it was stated that in the absence of outstanding reasons to the contrary, such recommendations would be accepted. The Council accepted the offer and the new procedure was working most satisfactorily; some 1,553 applications had been dealt with, and in almost every case effect had been given to the Council's recommendations. Recommendations for renewed deferment could be made under the same procedure, while for solicitors and clerks aged twenty-five to thirty the old procedure still applied. Altogether 4,887 cases had been dealt with.

When industrial registration was introduced for men of forty-one to forty-five, representations were at once made to the Ministry of Labour, in view of the growing shortage of solicitors and their clerks. When it was considered advisable that people should be transferred to industry they were interviewed by local officers of the Ministry of Labour, and, if agreement was not reached, there was a right of appeal to a local appeal board. The Council's view was that The Law Society, through its Military Deferment Committee, was better able than any other tribunal to say whether a solicitor or clerk could be released from his legal work. An assurance had been received that it was not desired to transfer solicitors and their clerks to industry where they were fully engaged in legal work. Solicitors now had an opportunity of appearing before the local officers of the Ministry of Labour where they or their clerks were concerned, and, if agreement was not reached, they could apply to The Law Society for a form to be filled in and returned to the Society, when the matter would be dealt with by one of the Society's panels. The Society's recommendation would be treated in the same way as in the case of deferment. The first appeals under this new procedure had now been received.

In conclusion, he thanked his colleagues on the Council for their support and the Secretary and staff for their excellent work, and expressed his confidence that under the guidance of his successor, with the support of the Council and the goodwill of the members, their great profession would emerge successfully from the difficult days which lay ahead.

DISCUSSION OF THE REPORT.

Mr. C. L. NORDON paid a tribute to the valuable work which the Society was doing, and said it seemed wrong that the contributions towards the Society's administration should come only from two-thirds of the profession when the whole profession benefited by its work. There had been a good deal of trouble in the past over the suggestion of compulsory membership, but he thought that if it was pointed out to members of the profession that the work of the Society was for the benefit of every practising solicitor, very few would desire to shirk their obligations. He hoped that those who did not contribute would be persuaded to do so, at first tactfully and afterwards, if necessary, forcibly.

The work of interpreting and applying the seven volumes of emergency legislation and the many thousands of statutory rules and orders left one with a feeling that the work could be very much simplified; he hoped that those responsible for drafting these complicated measures would make use of that simplified language so often called for in Parliament.

Of 230 books of accounts of solicitors examined under the rules, only 20 per cent. were found to be in order. Whatever was the eventual bill of defalcations, it must in honour bound be met. Simple preventative measures could avoid many of the things which seemed to be going on unabated at the present time. One of the objections to the Bill now before Parliament might be that it did not go far enough and insist on compulsory audit, and that every solicitor should give a receipt for all sums of money received, identifying and ear-marking them.

Mr. BARRY O'BRIEN asked whether something could be done, perhaps with the assistance of the Red Cross, to send books to prisoners of war who desired to continue their legal studies.

The President replied that the Society had been in communication with the Red Cross on the matter, and arrangements had been made for books to be sent.

Mr. O'Brien went on to say that in the view of some members, one cause of many of the defalcations which occurred was the inadequate remuneration of solicitors. "As the Council," he added, "will soon be in a position to reduce the profession almost to abject slavery, I hope they will give consideration to this matter." In view of the increased costs which had to be met, it might be found desirable to make a moderate increase in the remuneration to which solicitors were entitled.

Mr. BARRY COHEN agreed that the remuneration of solicitors was insufficient, and said he had put forward certain suggestions to deal with the position which he had been told were outside the scope of the Bill now before Parliament but might afford matter for another Bill. The difficulty there was that the profession would be told, "You have just had one Bill; you cannot have another." He hoped the passage of the present Bill would be delayed, because, at a time when so many distinguished members of the profession were on war service, it was undesirable to press forward with legislation which must be regarded as very controversial.

The Report was adopted unanimously, and the meeting concluded with a cordial vote of thanks to the President.

Notes of Cases.

PROBATE, DIVORCE AND ADMIRALTY DIVISION. (DIVORCE.)

Jones, W. v. Jones, A.

The President, Sir Boyd Merriman, and Hodson, J.

11th June, 1941.

Husband and Wife—Maintenance—Cruelty—Wilful neglect to maintain—Charge of cruelty dismissed—Interview with wife by woman justice with a view to reconciliation—No evidence of wilful neglect to maintain—Order for maintenance set aside.

Husband's appeal from a finding of the justices at Hawarden that he had been guilty of a neglect to maintain the respondent.

The parties were married at the end of July, 1940, and the wife left home on 18th January, 1941. The complaint on which the order was based was made on 21st January, 1941. A complaint by the wife of persistent cruelty by her husband was dismissed on the ground of lack of evidence. Before the bench finally retired to consider their decision a lady member of the bench interviewed the wife in a private room in an endeavour to effect a reconciliation. There was some evidence that the husband had not given his wife as much money as he could have done before she left home on 18th January, but the real substance of the case was the allegation that the wife was justified in leaving home by the conduct with which she had charged her husband under the name of persistent cruelty.

Sir BOYD MERRIMAN, P., said that justices, and indeed any court, must bear in mind that it was not merely necessary that justice should be done, but that it should appear to be done, and it was a matter of elementary procedure that one of the parties should not be examined by the court in any way behind the back of the other party. However little effect, it might be thought, in the magistrates' room, this interview had on their decision, its importance was that it should not be even remotely supposed outside their room to have affected their decision. For that reason alone it would be quite impossible to allow this decision to stand. On the facts as presented to the court, when once the issue of cruelty was found against the wife, there was no justification whatever for her leaving home. The first sentence of the justices' decision was: "The justices, after hearing the evidence, were of opinion that the parties would no longer live together." There was unchallenged evidence that the husband had, after his wife left home, made more than one effort to get her back. This sentence, therefore, read in the light of what occurred at the court, in fact meant that the wife was unwilling to return. It was impossible to accept in full the view that the investigation behind the scenes had no bearing on the decision of the justices.

It was impossible to hold that there was not some evidence on which the justices could find wilful neglect to maintain during the period before the separation, but on 28th March, when the order was made, she was living separate and apart from her husband without lawful excuse. The only proper course, therefore, was to set aside the order and allow the appeal.

Hodson, J., agreed that the appeal should be allowed.

Appeal allowed, the wife to get her costs, not in any case taxed costs, and not in any case to exceed the amount agreed on as security, the amount of £20.

COUNSEL: E. Woolf; Acton Pile.

SOLICITORS: Pritchard, Englefield & Co., for Mason & Moore Dutton, Chester; Ousley Smith & Co., Chester.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

